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DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

25 CFR Part 11

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RIN 1076-AF39

Addition of the Wind River Indian Reservation to the List of Courts of Indian Offenses

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Final rule; confirmation.

SUMMARY: The Bureau of Indian Affairs (BIA) is confirming the interim final rule published on October 27, 2016, establishing a Court of Indian Offenses (also known as a CFR Court) for the Wind River Indian Reservation.

DATES: This final rule is effective on [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER]

FOR FURTHER INFORMATION CONTACT: Ms. Elizabeth Appel, Director, Office of Regulatory Affairs & Collaborative Action – Indian Affairs, (202) 273-4680; elizabeth.appel@bia.gov.

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I. Summary of Rule

Generally, Courts of Indian Offenses operate in those areas of Indian country where Tribes retain jurisdiction over Indians that is exclusive of State jurisdiction, but where Tribal courts have not been established to fully exercise that jurisdiction. The Eastern Shoshone Tribe and the Northern Arapaho Tribe have an equal joint interest in the Wind River Indian Reservation. Since the publication of the Interim Final Rule establishing the Court of Indian Offenses for the Wind River Indian Reservation, the Shoshone & Arapaho Tribal Court has operated without the legal support of the Eastern Shoshone Tribe, and with limited resources. The Bureau has attempted to work with the Northern Arapaho Tribe towards establishing a system of courts with concurrent jurisdiction. However, after nine months of operation, the joint nature of the Wind River Indian Reservation has proven establishing such a system untenable.

Allowing the Bureau of Indian Affairs to constitute a CFR Court will provide all residents on the Wind River Indian Reservation with comprehensive judicial services, and ensure the administration of justice and public safety. To accomplish this, this rule finalizes the revision of a section of 25 CFR part 11 to add the Wind River Indian Reservation in Wyoming to the list of areas in Indian country with established Courts of Indian Offenses (also known as CFR Courts). This rule inserts the Wind River Indian Reservation into a new paragraph (d) in 25 CFR 11.100.

An interim final rule published on October 27, 2016 (81 FR 74675). Comments received on the interim final rule are addressed in Section II.H of this preamble, below.

II. Procedural Requirements

A. Regulatory Planning and Review (E.O. 12866 and 13563)

Executive Order 12866 provides that the Office of Information and Regulatory Affairs in the Office of Management and Budget will review all significant rules. The Office of Information and Regulatory Affairs has determined that this rule is not significant.

Executive Order 13563 reaffirms the principles of E.O. 12866 while calling for improvements in the nation's regulatory system to promote predictability, to reduce uncertainty, and to use the best, most innovative, and least burdensome tools for achieving regulatory ends. The executive order directs agencies to consider regulatory approaches that reduce burdens and maintain flexibility and freedom of choice for the public where these approaches are relevant, feasible, and consistent with regulatory objectives. E.O. 13563 emphasizes further that regulations must be based on the best available science and that the rulemaking process must allow for public participation and an open exchange of ideas. We have developed this rule in a manner consistent with these requirements.

B. Regulatory Flexibility Act

This rule will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.) because the rule affects only the administration of justice on a reservation through a CFR court.

C. Small Business Regulatory Enforcement Fairness Act

This rule is not a major rule under the Small Business Regulatory Enforcement Fairness Act (5 U.S.C. 804(2)). This rule:

- (a) Does not have an annual effect on the economy of \$100 million or more;
- (b) Will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions;

(c) Does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises.

D. Unfunded Mandates Reform Act

This rule does not impose an unfunded mandate on State, local, or tribal governments or the private sector of more than \$100 million per year. The rule does not have a significant or unique effect on State, local, or tribal governments or the private sector. A statement containing the information required by the Unfunded Mandates Reform Act (2 U.S.C. 1531 et seq.) is not required.

E. Takings (E.O. 12630)

This rule does not affect a taking of private property or otherwise have taking implications under Executive Order 12630. A takings implication assessment is not required.

F. Federalism (E.O. 13132)

Under the criteria in section 1 of Executive Order 13132, this rule does not have sufficient federalism implications to warrant the preparation of a federalism summary impact statement. A federalism summary impact statement is not required.

G. Civil Justice Reform (E.O. 12988)

This rule complies with the requirements of Executive Order 12988. Specifically, this rule:

(a) Meets the criteria of section 3(a) requiring that all regulations be reviewed to eliminate errors and ambiguity and be written to minimize litigation; and

(b) Meets the criteria of section 3(b)(2) requiring that all regulations be written in clear language and contain clear legal standards.

H. Consultation with Indian Tribes (E.O. 13175 and Departmental policy)

The Department of the Interior strives to strengthen its government-to-government relationship with Indian Tribes through a commitment to consultation with Indian Tribes and recognition of their right to self-governance and Tribal sovereignty. We have evaluated this rule under the department's consultation policy under the criteria in Executive Order 13175 and have consulted with the affected tribes.

Prior to issuing this regulation, the Department of the Interior and its Agencies, Bureaus, and Offices, communicated repeatedly with the Eastern Shoshone Tribe and the Northern Arapaho Tribe regarding public safety concerns for the residents of the Wind River Indian Reservation. Following the withdrawal of the Northern Arapaho Tribe from the Joint Business Committee, the Shoshone & Arapaho Tribal Court continued to operate with limited resources and only with the support of the Northern Arapaho Tribe. The Northern Arapaho Tribe has established its own Northern Arapaho Tribal Code has retitled the Shoshone & Arapaho Tribal Court as the Northern Arapaho Tribal Court. The Northern Arapaho Tribe and Eastern Shoshone Tribe have responded to the Interim Final Rule. The Northern Arapaho Tribe provided extensive documentation on its right to establish an independent judiciary, without addressing the pragmatic consequences of having multiple courts with concurrent jurisdiction on the Reservation. The Eastern Shoshone Business Committee expressly requested that the Department establish and operate a Court of Indian Offenses for the Wind River Indian Reservation.

After reviewing these comments, and the operation of the Court of Indian Offenses for the Wind River Indian Reservation over the past nine months, the Department has determined that to ensure public safety, it is necessary to establish a Court of Indian Offenses for the Wind River Indian Reservation.

I. Paperwork Reduction Act

This rule does not contain information collection requirements, and a submission to the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. 3501 et seq.) is not required. We may not conduct or sponsor, and you are not required to respond to, a collection of information unless it displays a currently valid OMB control number.

J. National Environmental Policy Act

This rule does not constitute a major Federal action significantly affecting the quality of the human environment. A detailed statement under the National Environmental Policy Act of 1969 (“NEPA”, 42 U.S.C. 4321 et seq.) is not required because the rule is covered by a categorical exclusion. This rule is excluded from the requirement to prepare a detailed statement because it is a regulation of an administrative nature. (For further information, see 43 CFR 46.210(i)) We have also determined that the rule does not involve any of the extraordinary circumstances listed in 43 CFR 46.215 that would require further analysis under NEPA.

K. Effects on the Energy Supply (E.O. 13211)

This rule is not a significant energy action under the definition in Executive Order 13211. A Statement of Energy Effects is not required.

L. Clarity of this Regulation

We are required by Executive Orders 12866 (section 1(b)(12)), and 12988 (section 3(b)(1)(B)), and 13563 (section 1(a)), and by the Presidential Memorandum of June 1, 1998, to write all rules in plain language. This means that each rule we publish must:

- (a) Be logically organized;
- (b) Use the active voice to address readers directly;
- (c) Use common, everyday words and clear language rather than jargon;
- (d) Be divided into short sections and sentences; and
- (e) Use lists and tables wherever possible.

If you feel that we have not met these requirements, send us comments by one of the methods listed in the "ADDRESSES" section. To better help us revise the rule, your comments should be as specific as possible. For example, you should tell us the numbers of the sections or paragraphs that you find unclear, which sections or sentences are too long, the sections where you think lists or tables would be useful, etc.

M. E.O. 13771: Reducing Regulation and Controlling Regulatory Costs

This rule is not an EO 13771 regulatory action because this rule is not significant under EO 12866.

List of Subjects in 25 CFR Part 11

Courts, Indians-law.

For the reason stated in the preamble the Department of the Interior, Bureau of Indian Affairs amends part 11 in Title 25 of the Code of Federal Regulations as follows:

PART 11—COURTS OF INDIAN OFFENSES AND LAW AND ORDER CODE

The interim final rule amending 25 CFR part 11 which was published at 81 FR 74675 on October 27, 2016, is adopted as final without change.

Dated: December 19, 2017

John Tahsuda,

Principal Deputy Assistant Secretary – Indian Affairs

Exercising the Authority of the Assistant Secretary – Indian Affairs.

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